ATTORNEY FOR APPELLANT:

LARRY O. WILDER
Jeffersonville, Indiana

ATTORNEY FOR APPELLEE:

CHERYL A. CARPENTER
Smith Bartlett Heeke Carpenter
Thompson & Fondrisi, LLC
Jeffersonville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

THOMAS ROBERTSON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 10A01-0701-CV-39
	)	
LISA ROBERTSON,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Richard Striegel, Special Judge
Cause No. 10D01-0304-DR-80

October 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Thomas Robertson appeals from the trial court's dissolution decree of the marriage of Thomas and appellee-petitioner Lisa Robertson. Specifically, Thomas argues that the trial court erred by (1) awarding Lisa 74% of the marital estate, (2) refusing to award Thomas retroactive child support, and (3) refusing to include $17,800 rent in the marital estate. Finding no error, we affirm the judgment of the trial court.

FACTS

Thomas and Lisa were married in February 1981. The couple had four children—A.R. was born in November 1982, Ca.R. was born in May 1988, K.R. was born in March 1991, and Co.R. was born in May 1995. A.R. is now an emancipated adult and the remaining children are minors.

In 1995, Thomas and Lisa moved to a farm residence in Marysville (the farm) that had been owned by Lisa's family for over one hundred years. Thomas and Lisa did not pay rent to live on the farm. On July 2, 2002, Lisa's mother signed a warranty deed conveying the farm to Lisa and Thomas as a gift. At the time of the transfer, Lisa was a homemaker and a part-time teacher and Thomas worked for the Ford Motor Company.

On August 1, 2002, Thomas and Lisa executed a $27,428.50 promissory note from the New Washington State Bank (the bank), using the farm as collateral to secure the note. Thomas and Lisa used the money to purchase a Curves health club franchise (the health club) in Charlestown, and Lisa began managing the facility.

On February 7, 2003, Thomas and Lisa executed a $86,935.99 promissory note with the bank, again using the farm as collateral. They used a portion of the money to pay off the first promissory note and they used the remainder of the money to purchase commercial real

estate in Charlestown (the Main Cross property).

Thomas and Lisa separated in March 2003, and Lisa filed a petition for dissolution on April 29, 2003. On August 11, 2005, Lisa filed a verified motion for entry of provisional orders. On September 20, 2005, the trial court entered a temporary custody order, whereby Thomas received temporary custody of K.R. and Lisa received temporary custody of Co.R. and Ca.R. Additionally, the trial court ordered Thomas to pay Lisa provisional child support in the amount of $153 per week, retroactive to August 11, 2005.

A final hearing was held on October 18 and 24, 2006. The trial court issued a dissolution decree on December 14, 2006, dividing the parties' martial property as follows:

Lisa's Assets:

Farm	$275,000
Health Club Proceeds after Debt	$5486
Main Cross Property after Debt	$0
1997 Ford Ranger	$1000
Farm Equipment	$5000
	TOTAL $286,486

Thomas's Assets:

1997 Diesel Truck	$14,800
18FT Baylineer Boat	$7500
Stock Trailer & Grain Truck	$12,000
Livestock	$20,000
Ford Retirement Plan	$46,381
	TOTAL $100,681

Appellant's App. p. 25. This division resulted in Lisa receiving approximately 74% of the martial estate and Thomas receiving approximately 26%. Additionally, Lisa was required to pay Thomas $24,000, which represented half of the mortgage payments that Tom had made

during the pendency of the action. Id. at 26.

The trial court further ordered that

> 4. It is agreed by the parties that [] they should share joint legal custody of their minor children, with [Lisa] to have primary physical custody of [Co.R.] and [Thomas] to have primary physical custody of [Ca.R. and K.R.]
>
> ***
>
> 10. [Thomas] requested the Court retroactively enter a child support order for the period of time prior to the September 2005 Order. . . . [Thomas] did not at any time request that the Court consider the issue of support or maintenance, though he was continuously represented by counsel. [Thomas's] proper course of action was to file a motion for support, or to modify the Order of September 20, 2004 if he though it beneficial. He further failed to provide a child support worksheet supporting his claim. . . . This Court denies [Thomas] any award of retroactive support during the provisional period.
>
> ***
>
> 12. During the provisional period, [Lisa] did not request maintenance, though for several years while working with [the health club], she had no income. For some of the provisional period, however, she did receive rents on the business property in lieu of child support and/or maintenance. [Thomas] claims an interest in the rent proceeds. It is reasonable that after the September, 2005 order for support was entered, [Thomas] should receive some of the $800 per month rent proceeds. His interest in the proceeds is $5200. [] This sum shall be credited to him against the child support arrearage owed by him . . . .

Appellant's App. p. 11, 13, 14-15. Thomas now appeals.

DISCUSSION AND DECISION

I. Division of Marital Assets

A. Standard of Review

At Thomas's request, the trial court issued findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. Our standard of review thereon is well settled:

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no

> evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

Carmichael v. Siegel, 754 N.E.2d 619, 625 (Ind. Ct. App. 2001) (citations omitted).

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), trans. denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. Id. When we review a challenge to the trial court's division of marital property, we may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of marital property. Daugherty v. Daugherty, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004). Moreover, the challenger must overcome a strong presumption that the court considered and complied with the applicable statute. Id.

In a dissolution action, the trial court must divide marital property in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation, or acquired by their joint efforts. Ind. Code § 31-15-7-4. The trial court's disposition of the marital estate is to be considered as a whole, not item by item. Eye v. Eye, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). Indiana Code section 31-15-7-5 provides:

> The court shall presume that an equal division of the marital property between

> the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
>
> (2) The extent to which the property was acquired by each spouse:
> (A) before the marriage; or
> (B) through inheritance or gift.
>
> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
>
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
>
> (5) The earnings or earning ability of the parties as related to:
> (A) a final division of property; and
> (B) a final determination of the property rights of the parties.

When ordering an unequal division, the trial court must consider all of the factors set out in the statute. Eye, 849 N.E.2d at 701.

B. Division of the Robertson's Marital Assets

Thomas argues that the trial court incorrectly deviated from the statutory presumption that marital assets will be divided equally and, instead, awarded Lisa 74% of the marital estate. Specifically, Thomas argues that the trial court did not consider all of the factors required by section 31-15-7-5 and that it "did not make findings of fact to support a conclusion that a deviation was fair and just inasmuch as there was no evidence to support such a conclusion." Appellant's Br. p. 16. Thomas focuses on the trial court's decision to award the farm to Lisa and emphasizes that he and Lisa both lived on the farm for seven

years before it was gifted to them.

When dividing the marital assets, the trial court noted the presumption of equal division and the statutory factors that must be considered for a party to rebut the presumption. However, it ultimately concluded:

> 10. The [farm] was gifted to the parties by [Lisa's] mother in July of 2002, less than nine months prior to the filing of the Petition for Dissolution. The property has been in [Lisa's] family for over a century. No significant contribution by the parties was made in the acquisition or improvement of the property during the course of the marriage. The facts and circumstances presented support an unequal division of the marital estate, with a distribution more favorable to [Lisa]. This Court finds the statutory presumption of equal division of marital property has been properly rebutted by the evidence presented.
>
> 11. The Court notes the similarity of the facts of this case to that in Wells v. Collins, 679 N.E.2d 915 (Ind. Ct. App. 1997). In Wells, the Indiana Court of Appeals found the wife had successfully rebutted the presumption of equal division by presenting evidence that the vast majority of the marital estate was acquired by the wife through inheritance and gift. The Court set off this inherited and gifted property to the wife as her sole property, and awarded the husband 75% of the remaining marital pot. As the Court of Appeals found in Wells, this Court finds that under the particular facts of this case an []equal division of the marital pot would be unjust and unreasonable. The gifted and inherited property shall be set off to [Lisa], with [Thomas] taking a larger portion of the remaining marital pot.

Appellant's App. p. 24.

The gravamen of Thomas's argument is that the trial court did not explicitly consider all of the statutory factors prescribed in Indiana Code section 31-15-7-5 and that it did not make the requisite findings of fact to support its judgment. However, we have previously held that while a trial court must consider all of the prescribed statutory factors, a party "goes too far [by claiming] that the trial court must explicitly address each of the considerations included in Indiana Code section 31-15-7-5." Eye, 849 N.E.2d at 702. And there is a strong

presumption that the trial court complied with the statute. Daugherty, 816 N.E.2d at 1187. While it is not proper to award a party property solely because the property was an inheritance or a gift, the nature of the acquisition is a relevant factor that must be considered in conjunction with the evidence regarding other statutory factors. Eye, 849 N.E.2d at 702.

In dividing the marital estate, the trial court recognized that the farm had been in Lisa's family for over one hundred years, that neither Lisa nor Thomas had made substantial improvements to the property during their residency, and that the parties filed for a divorce nine months after Lisa's mother gifted the farm to them. Appellant's App. p. 24-25. The trial court also noted that Lisa's mother's main purpose in gifting the farm was to "facilitate[] the purpose of acquiring [the health care franchise] for [Lisa]" so that the farm could be used as collateral for a loan. Id. Furthermore, the trial court recognized that Thomas had been employed by the Ford Motor Company for twenty years and that Lisa was a homemaker and part-time teacher before her unprofitable business venture with the health club.

The trial court outlined Indiana Code section 31-15-7-5 before concluding that Lisa had rebutted the presumption of equal division. Id. at 23-25. We find the trial court's analysis to be sufficient and do not find its failure to explicitly address each statutory factor in the context of the Robertsons' marital estate to constitute reversible error. It is clear from the trial court's findings that it considered the requisite statutory factors before concluding that Lisa had rebutted the presumption of equal property division. In light of the evidence described above, this conclusion was not clearly erroneous. It was within the trial court's discretion to divide the marital estate, and the trial court did not abuse its discretion by awarding Lisa the farm and awarding Thomas approximately ninety percent of the remaining

marital assets. Thomas's argument to the contrary fails.

II. Retroactive Child Support

The trial court entered an order on September 20, 2005, awarding temporary custody of K.R. to Thomas and temporary custody of both Co.R. and Ca.R. to Lisa. Additionally, the trial court ordered that Thomas pay Lisa $153 per week in child support, retroactive to August 11, 2005. Thomas now argues that the trial court erred by failing to enter a retroactive child support order in his favor for the twenty-eight months prior to the September 2005 order during which he was the custodial parent of the parties' three children. Specifically, Thomas argues that for those twenty-eight months he "received no child support, paid all of the mortgage payments on the [farm,] as well as other marital bills." Appellant's Br. p. 17.

In its order, the trial court provided:

> 10. [Thomas] requested the Court retroactively enter a child support order for the period of time prior to the September 2005 Order. Further, the Court notes there had been numerous changes in circumstances of the parties' incomes and changes in circumstances of where the children lived during the provisional period. Much of this time [Lisa] did not have income, as [the health club] was losing money. [Thomas] did not at any time request that the Court consider the issue of support or maintenance, though he was continuously represented by counsel. [Thomas's] proper course of action was to file a motion for support, or to modify the Order of September 20, 2004 if he thought it beneficial. He further failed to provide a child support worksheet supporting his claim. To now ask this Court to order retroactive child support is without factual or legal support and calls for the Court to speculate on all pertinent issues. This Court denies [Thomas] any award of retroactive support during the provisional period.

Appellant's App. p. 13 (emphases added).

It is the duty of the appellant to demonstrate reversible error, and we "will not sift

through a record to locate error so that we might state [a]ppellant's case for him." Campbell v. El Dee Apts., 701 N.E.2d 616, 621 (Ind. Ct. App. 1998). On appeal, Thomas baldly states that he was entitled to retroactive child support because three of the Robertsons' children lived with him during the pendency of the couple's divorce. However, as the trial court noted, Thomas did not file a motion seeking retroactive support and failed to file a child support worksheet supporting any claim he may have had. Because the trial court correctly observed that Thomas did not provide the factual or legal support necessary to make such an award, the trial court did not err by declining to award Thomas retroactive child support.

III. Rent

Thomas argues that the trial court erred by failing to include $17,800[1] in the marital estate that Lisa received as rent from the Robertson's commercial property. However, the trial court ordered that

> 12. . . . Thomas claims an interest in the rent proceeds [on the commercial property]. It is reasonable that after the September, 2005 order for support was entered, [Thomas] should receive some of the $800 per month rent proceeds. His interest in the proceeds is [half, or] $5200. This sum shall be credited to him against the child support arrearage owed by him.

Appellant's App. p. 14. Thomas's argument—or lack thereof—is confusing because he did, in fact, receive a benefit from the rent proceeds. Hence, we decline to address this alleged grievance further because Thomas fails to make a cogent argument.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

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[1] We are unsure how Thomas arrives at this figure, and he does not cite to the record or applicable case precedent in his six-sentence argument.